

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re

Bay Club Partners-472, LLC

-) Case No. 14-30394-rld11
)
) NOTICE OF **PRELIMINARY**
) HEARING ON MOTION
) ☒ FOR USE OF CASH COLLATERAL
) ☐ TO OBTAIN CREDIT
) (Check One)

Debtor(s)

YOU ARE NOTIFIED THAT:

1. The undersigned moving party, **Bay Club Partners-472, LLC**, filed a Motion ☒ For Use of Cash Collateral ☐ To Obtain Credit (*check one*). A copy of the motion is attached; and it includes BOTH (i) the statement required by Local Form #541.7, and (ii) the following allegations:

a. The immediate and irreparable harm that will come to the estate pending a final hearing is the inability to pay its ongoing operating expenses and thereby maintain the value of the estate.

b. The amount of ☒ cash collateral ☐ credit (*check one*) necessary to avoid the harm detailed above prior to the final hearing is as set forth in Exhibit 1 to Debtor's Motion.

2. The name and service address of the moving party's attorney (or moving party, if no attorney) are: Ava L. Schoen, Tonkon Torp LLP, 888 SW Fifth Avenue, Suite 1600, Portland, OR 97204.

3. A **PRELIMINARY** HEARING on the motion WILL BE HELD ON 01/31/14 AT 10:00 a.m.

by telephone. All parties wishing to participate by telephone should call 1 888 684 8852. When connected, enter "5870400" followed by the "#" key. Local counsel must appear in Courtroom #3, US Bankruptcy Court, 1001 SW Fifth Avenue, Portland, Oregon 97204. Testimony will be received if offered and admissible.

4. If you wish to object to the motion, you must do one or both of the following: (1) attend the preliminary hearing; and/or (2) file with the Clerk of Court (i.e., if the 5-digit portion of the Case No. begins with "3" or "4", mail to 1001 SW 5th Ave. #700, Portland OR 97204; OR if it begins with "6" or "7", mail to 405 E 8th Ave #2600, Eugene OR 97401), a written response, which states the facts upon which you will rely and, if the response is filed within three business days before the hearing, notify the judge's chambers by telephone immediately after filing the document, as required by LBR 9004-1(b). See Local Form #541.51 for details.

5. On 01/28/14 copies of BOTH this notice AND the motion were served pursuant to FRBP 7004 on the debtor(s); any debtor's attorney; any trustee; any trustee's attorney; members of any committee elected pursuant to 11 U.S.C. §705; any Creditors' Committee Chairperson [or, if none serving, on all creditors listed on the list filed pursuant to FRBP 1007(d)]; any Creditors' Committee attorney; the U.S. Trustee; and all affected lien holders whose names and addresses used for service are as follows:

/s/ Ava L. Schoen

Signature

888 SW Fifth Avenue, Suite 1600, Portland, OR 97204

(If debtor is movant) Debtor's Address & Taxpayer ID#(s) (last 4 digits)

1 **Albert N. Kennedy**, OSB No. 821429 (Lead Attorney)

Direct Dial: (503) 802-2013

2 Facsimile: (503) 972-3713

E-Mail: al.kennedy@tonkon.com

3 **Ava L. Schoen**, OSB No. 044072

Direct Dial: (503) 802-2143

4 Facsimile: (503) 972-3843

E-Mail: ava.schoen@tonkon.com

5 **TONKON TORP LLP**

1600 Pioneer Tower

6 888 S.W. Fifth Avenue

Portland, OR 97204

7 Attorneys for Debtor

10 UNITED STATES BANKRUPTCY COURT

11 DISTRICT OF OREGON

12 In re

Case No. 14-30394-rld11

13 Bay Club Partners-472, LLC,

**DEBTOR'S MOTION FOR
TEMPORARY AND FINAL
AUTHORITY TO USE CASH
COLLATERAL**

14 Debtor.

EXPEDITED HEARING REQUESTED

17 Pursuant to 11 U.S.C. § 363(c) and Bankruptcy Rule 4001(b), Bay Club
18 Partners-472, LLC ("Debtor") moves this Court for an order (a) authorizing Debtor to use
19 cash collateral in which Legg Mason Real Estate CDO I, Ltd. ("CDO") has an interest on a
20 temporary basis until a final hearing can be held on this motion; and (b) after final hearing
21 held pursuant to Bankruptcy Rule 4001(c)(2) a final order authorizing Debtor to use cash
22 collateral during the pendency of this case. In support of its motion Debtor states as follows:

23 1. On January 28, 2014 (the "Petition Date"), Debtor filed a voluntary
24 petition for relief under Chapter 11 of Title 11 of the United States Code.

2. Debtor has continued in possession of its property and is continuing to operate and manage its business as debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

4. No request has been made for the appointment of a trustee or examiner, and an official committee has not yet been established in this case.

5. Debtor is an Oregon limited liability company formed in 2005 with its principal place of business in Beaverton, Oregon. Debtor was formed to renovate and operate residential property located at 2121 W. Main St., Mesa, Arizona 85201 known as Midtown on Main Street (the "Property"). The Property has approximately 470 rental units and offers residents amenities including a fitness center, spa, clubhouse, three swimming pools, a covered play area, assigned parking, and 24-hour emergency maintenance services. As of the Petition date, Debtor has renovated all of the Property and has leased approximately 91% of the Property's apartments to residential tenants. Debtor continues to seek tenants for the remaining spaces.

6. As of the Petition Date, Debtor was indebted to CDO in the approximate principal amount of \$24 million. In addition, Debtor has contingent or unliquidated obligations to CDO for certain fees in the approximate amount of \$3,198,750. The obligations of Debtor to CDO are secured by a perfected first security interest in substantially all of Debtor's assets, including rents and certain reserves for insurance, taxes, maintenance, and capital expenses, held by NorthMarq Capital, LLC, the loan servicer.

7. In order to preserve and maintain the assets of the estate, Debtor requires cash for the payment of utilities, operating expenses (including taxes and insurance),

1 and management fees. Debtor has prepared a budget, a copy of which is attached as

2 **Exhibit 1.**

3 8. Debtor's budget projects that Debtor will use approximately \$230,000
4 to \$390,000 per month from February 2014 through April 2014 for normal and usual
5 operating expenses. In addition, Debtor will need funds for deposits to utilities, if such
6 deposits are requested.

7 9. Debtor seeks Court authority to fund the expenses set forth on
8 **Exhibit 1** from both its cash flow and the reserves.

9 10. It is in the best interest of Debtor, its creditors, and its estate for Debtor
10 to use cash collateral because use of cash collateral will allow the continued operation of
11 Debtor as a going concern and will maximize the likelihood of reorganization, thereby
12 maximizing the recovery to creditors.

13 11. To provide adequate protection for the use by Debtor of cash in which
14 CDO claims or may claim an interest, Debtor will provide CDO with a continuing security
15 interest in all assets of Debtor from and after the Petition Date of the same category, kind,
16 character, priority, and description as was subject to a perfected and valid security interest in
17 existence on the Petition Date. As additional adequate protection, commencing on April 28,
18 2014 and continuing on the 28th day of each month thereafter, Debtor will pay the sum of
19 \$55,000 to CDO. \$55,000 is the approximate average amount of interest at the non-default
20 rate that Debtor paid to CDO during the six months preceding the Petition Date. The
21 adequate protection security interest and payments shall not improve the position of CDO.

22 12. As additional adequate protection for the use by Debtor of cash in
23 which CDO claims or may claim an interest, Debtor will continue to maintain and manage
24 the Property, pay taxes and insurance on the Property, and protect the Property from
25 diminution in value from and after the Petition Date.

6 15. Debtor will suffer immediate and irreparable harm if it is not permitted
7 to use cash collateral in which CDO has an interest.

10 17. A copy of the proposed Order Authorizing Use of Cash Collateral and
11 Granting Adequate Protection is attached hereto as **Exhibit 2**.

WHEREFORE, Debtor prays that this Court enter an interim order

(a) authorizing Debtor to use cash collateral, pending a final hearing on this motion;

(b) granting to CDO adequate protection as herein proposed or as otherwise approved by the

Court; and (c) setting a final hearing on this motion.

16 DATED this 28th day of January, 2014.

17 TONKON TORP LLP

19 By /s/ Ava L. Schoen
20 Albert N. Kennedy, OSB No. 821429
Ava L. Schoen, OSB No. 044072
Attorneys for Debtor

EXHIBIT 1

BUDGET

	Feb-14	Mar-14	Apr-14
TOTAL RENTAL INCOME	280,000	280,000	280,000
TOTAL OTHER REVENUE	28,000	28,000	28,000
TOTAL INCOME	308,000	308,000	308,000
OFFICE AND GENERAL ADMIN	13,000	13,000	13,000
MANAGEMENT PAID PAYROLL EXPENSE	49,000	49,000	49,000
MARKETING & INTERNET ADVERTISING	9,000	9,000	9,000
ELECTRICITY	4,500	4,500	4,500
GAS	900	900	900
WATER	19,000	19,000	19,000
REPAIRS & MAINTENANCE	32,000	32,000	32,000
SUPPLY EXPENSE	15,000	15,000	15,000
MISCELLANEOUS	20,000	20,000	20,000
MANAGEMENT FEE (2.75% Gross Income)	8,470	8,470	8,470
CONTRACT-LANDSCAPE	4,500	4,500	4,500
CONTRACT-SECURITY SERVICE	1,500	1,500	1,500
CONTRACT-FIRE PROTECTION	500	500	500
CONTRACT-PEST CONTROL	2,500	2,500	2,500
CONTRACT-PARKING LOT SWEEP	550	550	550
TRASH REMOVAL	2,600	2,600	2,600
APPLIANCES	15,000	15,000	15,000
WATER HEATERS	2,000	2,000	2,000
CARPET / VINYL REPLACEMENT	18,000	18,000	18,000
HVAC	9,000	9,000	9,000
PERSONAL PROPERTY / OFFICE EQUIPMENT	3,000	3,000	3,000
INSURANCE, PROPERTY & CASUALTY (from reserves)	54,691	0	0
REAL PROPERTY TAXES (JULY-DECEMBER 2013) (from reserves)	0	0	100,748
US TRUSTEE FEES	0	0	4,875
INTEREST PAYMENT TO LENDER (NON DEFAULT CONTRACT RATE)	0	0	55,000
TOTAL EXPENSES	284,711	230,020	390,643

EXHIBIT 2

PROPOSED FORM OF ORDER

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re

Bay Club Partners-472, LLC,
Debtor.

Case No. 14-30394-rld11

**INTERIM ORDER AUTHORIZING USE
OF CASH COLLATERAL**

THIS MATTER having come before the Court for an interim hearing on the Debtor's Motion for Temporary and Final Authority to Use Cash Collateral (the "Motion"), the Court has reviewed the Motion and the files and records in this case, has heard the statements of counsel on the record, has been advised by Debtor that Legg Mason Real Estate CDO I, Ltd. ("CDO") claims a security interest in Debtor's cash collateral, and being otherwise fully advised; The Court finds as follows:

1. The notice given to creditors of this hearing was adequate;
2. Debtor has an immediate need for the use of cash collateral to protect the estate from harm and preserve its value and will suffer irreparable harm if the immediate use of cash is not granted.

IT IS THEREFORE ORDERED that:

Page 1 of 3 - INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL

1. The Motion is approved on an interim basis without prejudice to other parties in interest.
2. Pending further hearing on the use of cash collateral, Debtor is authorized to use cash collateral, including cash flow and funds held in reserve by the CDO, within the parameters of the budget attached hereto as **Exhibit 1**, so long as such use does not exceed the budget by more than 10% on a cumulative basis; provided, however, that the use of cash collateral may be continued on an interim basis by mutual consent of Debtor and CDO, subject to approval of the Court.
3. CDO will continue to have security interests in Debtor's real property, leases, rents, and accounts to the same extent and to with the same priority that CDO held valid and perfected security interests and liens as of the Petition Date.
4. As additional Adequate Protection, commencing on April 20, 2014 and continuing on the 20th day of each month thereafter during the pendency of this case, Debtor will pay \$55,000 to CDO.
5. Nothing herein shall be construed to enhance the secured position of CDO as it existed on the date of the filing of the petition.

IT IS FURTHER ORDERED that a further hearing on Debtor's Motion for Temporary and Final Authority to Use Cash Collateral shall be held by telephone on _____, _____, 2014, at _____ a.m./p.m. Local counsel to appear in in Courtroom #3, United States Bankruptcy Court, 1001 SW Fifth Avenue, Portland, Oregon. Debtor shall provide notice thereof.

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* * *

* * *

* * *

* * *

I certify that I have complied with the requirements of LBR 9021-1(a)(2)(A).

Presented by:

TONKON TORP LLP

By _____
Albert N. Kennedy, OSB No. 821429
Ava L. Schoen, OSB No. 044072
888 S.W. Fifth Avenue, Suite 1600
Portland, OR 97204-2099
Telephone: 503-221-1440
Facsimile: 503-274-8779
E-mail: al.kennedy@tonkon.com
ava.schoen@tonkon.com
Attorneys for Debtor

cc: List of Interested Parties

EXHIBIT 1

BUDGET

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TOTAL RENTAL INCOME	280,000	280,000	280,000
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US TRUSTEE FEES	0	0	4,875
INTEREST PAYMENT TO LENDER (NON DEFAULT CONTRACT RATE)	0	0	55,000
TOTAL EXPENSES	284,711	230,020	390,643

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEBTOR'S MOTION FOR TEMPORARY AND FINAL AUTHORITY TO USE CASH COLLATERAL** was served on the parties indicated as "ECF" on the attached List of Interested Parties by electronic means through the Court's Case Management/Electronic Case File system on the date set forth below.

In addition, the parties indicated as "Non-ECF" on the attached List of Interested Parties were served by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to each party's last-known address and depositing in the U.S. mail at Portland, Oregon on the date set forth below.

DATED this 28th day of January, 2014.

TONKON TORP LLP

By /s/ Ava L. Schoen

Albert N. Kennedy, OSB No. 821429

Ava L. Schoen, OSB No. 044072

Attorneys for Debtor

LIST OF INTERESTED PARTIES

In re Bay Club Partners-472, LLC
U.S. Bankruptcy Court Case No. 14-30394-rld11

ECF PARTICIPANTS

- ALBERT N KENNEDY al.kennedy@tonkon.com, leslie.hurd@tonkon.com;andy.haro@tonkon.com
- US Trustee, Portland USTPRegion18.PL.ECF@usdoj.gov

NON-ECF PARTICIPANTS

SECURED CREDITOR

LEGG Mason Real Estate CDO I, Ltd.
10880 Wilshire Blvd. #1750
Los Angeles CA 90024

LEGG Mason Real Estate CDO I, Ltd.
c/o Latitude Management Real
Estate Investors, Inc.
Attn: Michael Schlesinger
350 S. Beverly Dr. #300
Beverly Hills CA 90212
Phone: 310-234-2100
Fax: 310-234-2450

TOP 20 UNSECURED CREDITORS

SMD Remodeling LLC
3102 57th Ave.
Phoenix, AZ 85031
Phone: 602-348-7989
Fax: 623-849-1671

HD Supply Facilities
Maintenance, L.T.D.
POB 509058
San Diego, CA 92150-9058
Phone: 858-831-2573
Fax: 800-859-8889

IDT Landscaping LLC
1876 3rd St
Tempe, AZ 85281
Phone: 480-829-8530
Fax: 480-829-9395

J.R. McDade Co. Inc.
1102 N. 21st Ave.
Phoenix, AZ 85009
Phone: 602-955-9400
Fax: 480-951-3161

AZ Partsmaster
POB 23169
Phoenix, AZ 85063
Phone: 520-573-5828
Fax: 602-233-3607

AZ Brite Carpet Care
1602 N Gilbert Rd
Mesa, AZ 85203
Phone: 480-962-5876
Fax: 480-962-6134

Wildcat Fire Protection
2929 Clarendon Ave.
Phoenix, AZ 85017
Phone: 623-695-3609
Fax: 602-495-9291

Apartments Resurfacing
3039 W. Peoria Ave. C102 #115
Phoenix, AZ 85029
Phone: 602-468-0739
Fax: 602-955-6188

P & J's Painting Inc
273 S. Link Creek Rd.
Prescott, AZ 86303
Phone: 623-695-3609

Level One LLC
POB 671476
Dallas, TX 75267-1476
Phone: 864-331-4300
Fax: 800-866-8736

Rainforest Plumbing & Air
127 S. Weber Dr.
Chandler, AZ 85226
Phone: 480-615-7766
Fax: 866-760-6320

Valley Protective Services Inc
POB 11568
Chandler, AZ 85248
Phone: 480-777-0003
Fax: 480-777-0004

Sherwin Williams Co.
2760 E. Main St. #105
Mesa, AZ 85213-9275
Phone: 480-926-9793
Fax: 480-926-4969

Apartment Interior Supply
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Mesa, AZ 85274
Phone: 480-694-7600
Fax: 480-964-7610

Maria Gonzales
dba Allshine Cleaning
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Mesa, AZ 85274
Phone: 602-690-4632
Fax: 602-404-3508

Burns Pest Elimination Inc
2620 W. Grovers Ave.
Phoenix, AZ 85053
Phone: 602-971-4782
Fax: 602-870-4563

Leslies Poolmart, Inc.
POB 501162
St. Louis, MO 63150
Phone: 602-366-3789

Maintenance Supply Headquarters
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Dallas TX 75303
Phone: 832-221-5910
Fax: 972-934-6101

Koglmeier Law Group, PLC
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Mesa AZ 85203
Phone: 480-962-5353
Fax: 480-962-0010

AAA Landlord Services, Inc.
POB 5960
Mesa AZ 85211
Phone: 480-668-5953
Fax: 480-668-7425

UTILITIES

CenturyLink
POB 29040
Phoenix AZ 85038
Phone: 1877-744-4416
Fax: 800-366-2382

City of Mesa
POB 1878
Mesa AZ 85211-1878
Phone: 480-644-2221
Fax: 480-644-2834

Salt River Project
POB 80062
Prescott AZ 86304
Phone: 602-236-8888
Fax: 602-629-8379

YES Energy Management, Inc.
2150 Lelaray Street
Colorado Springs CO 80908
Phone: 719-632-9100
Fax: 719-632-2265